

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

WINE & CANVAS DEVELOPMENT,)
LLC)
)
Plaintiff,)

v.)

Case No. 1:11-cv-01598-TWP-DKL

THEODORE WEISSER, CHRISTOPHER)
MUYLLE, YN CANVAS CA, LLC, and)
ART UNCORKED)
)
Defendants.)

CHRISTOPHER MUYLLE,)
)
Counterclaim Plaintiff and)
Third Party Plaintiff,)

v.)

WINE & CANVAS DEVELOPMENT,)
LLC,)
)
Counterclaim Defendant, and)

DONALD McCracken, ANTHONY)
SCOTT, and TAMRA SCOTT,)
)
Third Party Defendants.)

ENTRY ON REPORT & RECOMMENDATIONS

This matter is before the Court on Defendant Christopher Muylle's Motion to Dismiss for Plaintiff's Failure to Comply with Discovery Requests and Court Orders (Dkt. 111); Defendant Christopher Muylle's Motion to Dismiss for Failure to State a Claim and Failure to Seek Leave

of Court (Dkt. 113); and Third-Party Defendants', Anthony Scott, Tamra McCracken and Donald McCracken, Motion for Leave to File Third-Party Counterclaim and to Join Third-Party Counterclaim Defendants (Dkt. 140).

Magistrate Judge Denise LaRue issued Report & Recommendations, pursuant to Fed. R. Civ. P. 72 and 28 U.S.C. § 636(b)(1), on each of these motions. Regarding Dkt. 111, Judge LaRue also recommended the motion be granted in part and denied in part (Dkt. 155). Regarding Dkt. 113, Judge LaRue recommended the motion be denied as moot (Dkt. 163). Finally, regarding Dkt. 140, Judge LaRue recommended the motion be denied (Dkt. 160).

I. BACKGROUND

The pertinent facts of each motion are set forth in Judge LaRue's Report & Recommendations. The Court will dispense with further recitation.

II. LEGAL STANDARD

As an initial matter, a district court may assign dispositive motions to a magistrate judge, in which case the magistrate judge may submit to the district judge only a report and recommended disposition, including any proposed findings of fact. *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 760 (7th Cir. 2009). *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). "The magistrate judge's recommendation on a dispositive matter is not a final order, and the district judge makes the ultimate decision to adopt, reject, or modify it." *Schur*, 577 F.3d at 760. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). After a magistrate judge makes a report and recommendation, either party may object within fourteen days. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which

objection is made.” 28 U.S.C. § 636(b)(1). Further, a judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

III. DISCUSSION

A. Defendant Christopher Muylle’s Motion to Dismiss for Plaintiff’s Failure to Comply with Discovery Requests and Court Orders (Dkt. 111)

Judge LaRue entered her Report & Recommendations for Dkt. 111 (Dkt. 155) on September 23, 2013. Fourteen days have passed since she issued her ruling and none of the parties have filed objections. Therefore, the Court **ADOPTS in full** the recommendation of Judge LaRue (Dkt. 155). Mr. Muylle’s Motion to Dismiss (Dkt. 111) is **GRANTED in part** and **DENIED in part**.

B. Defendant Christopher Muylle’s Motion to Dismiss for Failure to State a Claim and Failure to Seek Leave of Court (Dkt. 113)

Judge LaRue entered her Report & Recommendations for Dkt. 113 (Dkt. 163) on October 17, 2013. Fourteen days have passed since she issued her ruling and none of the parties have filed objections. Therefore, the Court **ADOPTS in full** the recommendation of Judge LaRue (Dkt. 163). Mr. Muylle’s Motion to Dismiss (Dkt. 113) is **DENIED as moot**.

C. Third-Party Defendants’, Anthony Scott, Tamra McCracken and Donald McCracken, Motion for Leave to File Third-Party Counterclaim and to Join Third-Party Counterclaim Defendants (Dkt. 140)

Judge LaRue entered her Report & Recommendations for Dkt. 140 (Dkt. 160) on October 8, 2013. Fourteen days have passed since she issued her ruling and none of the parties have filed objections. Therefore, the Court **ADOPTS in full** the recommendation of Judge LaRue (Dkt. 160). Third-Party Defendants’ Motion for Leave to File Third-Party Counterclaim and to Join Third-Party Counterclaim Defendants (Dkt. 140) is **DENIED**.

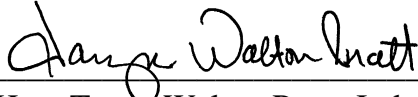
IV. CONCLUSION

The Court therefore makes the following rulings:

- The Report & Recommendations for Dkt. 111 (Dkt. 155) is **ADOPTED in full**. Mr. Muylle's Motion to Dismiss (Dkt. 111) is **GRANTED in part** and **DENIED in part**.
- The Report & Recommendations for Dkt. 113 (Dkt. 163) is **ADOPTED in full**. Mr. Muylle's Motion to Dismiss (Dkt. 113) is **DENIED as moot**.
- The Report & Recommendations for Dkt. 140 (Dkt. 160) is **ADOPTED in full**. Third-Party Defendants' Motion for Leave to File Third-Party Counterclaim and to Join Third-Party Counterclaim Defendants (140) is **DENIED**.

SO ORDERED.

11/07/2013
Date: _____



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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